

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 227

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO PAYDAY LOANS; AMENDING SECTION 28-46-402, IDAHO CODE, TO PROVIDE THAT A PAYDAY LOAN MADE IN THIS STATE IN VIOLATION OF THE LICENSING REQUIREMENT OF THE DEPARTMENT OF FINANCE IS VOID, UNCOLLECTIBLE AND UNENFORCEABLE, TO PROVIDE THAT FOR ANY SUCH PAYDAY LOAN THE DEBTOR IS NOT OBLIGATED TO PAY THE PRINCIPAL OR ANY FEE ASSOCIATED WITH SUCH PAYDAY LOAN, TO PROVIDE PROCEDURES AND TO PROVIDE FOR CEASE AND DESIST ACTIONS BY THE DIRECTOR OF THE DEPARTMENT OF FINANCE; AMENDING SECTION 28-46-412, IDAHO CODE, TO REVISE PAYDAY LOAN PROCEDURES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-46-413, IDAHO CODE, TO PROVIDE PROCEDURES UPON THE THIRD RENEWAL OF A PAYDAY LOAN, TO PROVIDE FOR A PAYMENT PLAN AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 28-46-402, Idaho Code, be, and the same is hereby amended to read as follows:

28-46-402. LICENSE REQUIRED. (1) No person shall engage in the business of payday loans, offer or make a payday loan, or arrange a payday loan for a third party lender in a payday loan transaction without having first obtained a license under this chapter. A separate license shall be required for each location from which such business is conducted.

(2) Any "supervised financial organization," as defined in section 28-41-301(45), Idaho Code, or any person organized, chartered, or holding an authorization certificate under the laws of another state to engage in making loans and receiving deposits, including a savings, share, certificate, or deposit account and who is subject to supervision by an official or agency of the other state, shall be exempt from the licensing requirements of this section.

(3) A payday loan made in this state in violation of the licensing requirement of this section is void, uncollectible and unenforceable. For any such payday loan the debtor is not obligated to pay the principal or any fee associated with such payday loan. If a debtor has paid any part of the principal or fee, the debtor has a right to recover the payment from the person violating the provisions of this section or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. In the event the administrator initiates an administrative or civil action against a person who has violated the provisions of this section, the administrator shall be entitled to recover the principal and fees received by such person in a payday loan transaction made in violation of the provisions of this section.

(4) If the administrator finds that a person subject to this part has violated, is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this

1 part, or any rule promulgated under this part and pertinent to this part, the administrator may, in
 2 his discretion, order the person to cease and desist from the violations.

3 SECTION 2. That Section 28-46-412, Idaho Code, be, and the same is hereby amended
 4 to read as follows:

5 28-46-412. PAYDAY LOAN PROCEDURES. (1) Each payday loan must be
 6 documented in a written agreement signed by the borrower. The loan agreement must include
 7 the name of the licensee, the loan date, the principal amount of the loan, and a statement of
 8 the total amount of fees charged as a condition of making the loan, expressed both as a dollar
 9 amount and as an annual percentage rate (APR).

10 (2) The maximum principal amount of any payday loan is one thousand dollars (\$1,000).

11 (3) A licensee may charge a fee for each payday loan. Such fee shall be deemed fully
 12 earned as of the date of the transaction and shall not be deemed interest for any purpose of law.
 13 No other fee or charges may be charged or collected for the payday loan except as specifically
 14 set forth in this ~~act~~ part.

15 (4) Each licensee shall conspicuously post in each licensed location a notice of the fees,
 16 expressed as a dollar amount per one hundred dollars (\$100), charged for payday loans.

17 (5) Before disbursing funds pursuant to a payday loan, a licensee shall provide written
 18 notice to the borrower indicating the following:

19 (a) A payday loan is intended to address short-term, not long-term, financial needs.

20 (b) The borrower will be required to pay additional fees if the payday loan is renewed
 21 rather than paid in full when due.

22 (c) The borrower has the right to rescind the payday loan, at no cost, no later than the
 23 end of the next business day following the day on which the payday loan is made.

24 (d) The borrower should consider consulting with a licensed credit or debt counselor if
 25 the borrower is having difficulty meeting financial obligations, specifying the department
 26 of finance website address where information concerning licensed credit or debt
 27 counselors can be found.

28 (6) (a) A payday loan may be made pursuant to a transaction whereby the licensee:

29 (i) Accepts a check from a borrower who is the maker of the check; and

30 (ii) Agrees not to negotiate, deposit or present the check for an agreed upon
 31 period of time and pays to the maker the amount of the check, less the fees
 32 permitted by this ~~act~~ part.

33 (b) In such a transaction, the licensee may accept only one (1) postdated check for each
 34 loan as security for the loan. Before the licensee may negotiate or present a check for
 35 payment, the check shall be endorsed with the actual name under which the licensee is
 36 doing business. The borrower shall have the right to redeem the check from the licensee
 37 at any time prior to the presentment or deposit of the check by making payment to the
 38 licensee of the full amount of the check in cash or immediately available funds.

39 (7) The amount advanced to the borrower by the licensee in a payday loan may be paid
 40 to the borrower in the form of cash, the licensee's business check, a money order, an electronic
 41 funds transfer to the borrower's account, or other reasonable electronic payment mechanism,
 42 provided however, that no additional fee may be charged to the borrower by a licensee to
 43 access the proceeds of the payday loan.

44 (8) A payday loan may be repaid by the borrower in cash, by negotiation of the
 45 borrower's check in a transaction pursuant to subsection (6) of this section or, with the

1 agreement of the licensee, a debit card, a cashier's check, an electronic funds transfer from the
2 borrower's bank account, or any other reasonable electronic payment mechanism to which the
3 parties may agree.

4 SECTION 3. That Section 28-46-413, Idaho Code, be, and the same is hereby amended
5 to read as follows:

6 28-46-413. PAYDAY LOAN BUSINESS PRACTICES. (1) No licensee or person
7 related to a licensee by common control may have outstanding at any time to a single borrower
8 a loan or loans with an aggregate principal balance exceeding one thousand dollars (\$1,000),
9 plus allowable fees.

10 (2) No payday loan shall be repaid by the proceeds of another payday loan made by the
11 same licensee or a person related to the licensee by common control.

12 (3) If the borrower's check is returned unpaid to the licensee from a payor financial
13 institution, the licensee shall have the right to collect charges authorized by section 28-22-105,
14 Idaho Code, provided such charges are disclosed in the loan agreement. A licensee may not
15 charge treble damages. If the borrower's obligation is assigned to any third party for collection,
16 the provisions of this section shall apply to such third party collector.

17 (4) A licensee shall not threaten a borrower with criminal action as a result of any
18 payment deficit.

19 (5) No licensee shall engage in unfair or deceptive acts, practices or advertising in the
20 conduct of a payday loan business.

21 (6) A licensee may renew a payday loan no more than three (3) consecutive times,
22 after which the payday loan shall be repaid in full by the borrower. A borrower may enter
23 into a new loan transaction with the licensee at any time after a prior loan to the borrower is
24 completed. A loan secured by a borrower's check is completed when the check is presented or
25 deposited by the licensee or redeemed by the borrower pursuant to section 28-46-412(6), Idaho
26 Code.

27 (7) A licensee and borrower may agree to a payment plan for a payday loan at any time.
28 Subject to the terms and conditions contained in this subsection and in subsections (8) through
29 (11) of this section, a borrower who is unable to repay a payday loan when due may elect
30 once in any twelve (12) month period to repay the payday loan to a licensee by means of an
31 extended payment plan. The twelve (12) month period is measured from the date the borrower
32 enters into one (1) extended payment plan with a licensee until the date that the borrower enters
33 into another extended payment plan with a licensee.

34 (8) To request an extended payment plan, the borrower, before the due date of the
35 outstanding payday loan, must request the plan and sign an amendment to the payday loan
36 agreement that memorializes the plan's terms.

37 (9) A licensee may charge a borrower an additional fee not to exceed the amount of the
38 original contract fee for the right to enter into an extended payment plan. The payment plan
39 fee may be charged only once per extended payment plan. The extended payment plan's terms
40 must allow the borrower to repay the outstanding payday loan, including any fee due, in at
41 least four (4) substantially equal installments. Each plan installment must be due on or after
42 a date on which the borrower receives regular income. The borrower may prepay an extended
43 payment plan in full at any time without penalty. The licensee shall not charge a borrower any
44 other interest or additional fees during the term of the extended payment plan. The licensee
45 may, with each payment made under the plan by a borrower, provide for the return of the

1 borrower's prior held check and require a new check for the remaining balance under the plan.
 2 Alternatively, the licensee may require the borrower, at the time he enters into the extended
 3 payment plan, to provide multiple checks or automated clearing house (ACH) authorizations,
 4 one (1) for each of the scheduled payments in the amount of those payments. A licensee
 5 is prohibited from engaging in collection activities or making any additional payday loans to
 6 the borrower while the borrower continues to make timely payments in accordance with the
 7 extended payment plan.

8 (10) If the borrower fails to pay any extended payment plan installment when due, the
 9 borrower shall be in default of the payment plan and the licensee may immediately accelerate
 10 payment on the remaining balance. Upon default, the licensee may take action to collect all
 11 amounts due and charge the borrower an additional one-time default fee as authorized pursuant
 12 to section 28-22-105, Idaho Code.

13 (11) A licensee must notify a borrower of his right to an extended payment plan by
 14 displaying the following statement in at least twelve (12) point bold type on the first page of
 15 each payday loan agreement:

16 "If you are unable to repay a payday loan when due, you may be eligible to request
 17 an extended payment plan. You must request the plan from us on or before the
 18 due date of your payday loan and sign an amendment to the payday loan agreement.
 19 You qualify for an extended payment plan from us once in any twelve (12) month
 20 period."

21 At each licensed location, the licensee shall also post this same notice in at least twenty-four
 22 (24) point bold type.

23 (12) If a licensee conducts a deferred deposit transaction with a customer over the
 24 internet, the written loan agreement containing all required notices shall be provided to the
 25 customer electronically and shall be available for the customer to download and print. If the
 26 customer notifies the licensee that he or she is unable to download the written loan agreement,
 27 the licensee shall mail the written loan agreement to the customer within twenty-four (24) hours
 28 of receiving such notification from the borrower.

29 (13) Other than a borrower's check in a transaction pursuant to section 28-46-412(6),
 30 Idaho Code, a licensee shall not accept any property, title to property, or other evidence of
 31 ownership as collateral for a payday loan.

32 (14) A licensee may conduct other business at a location where it engages in payday
 33 lending unless it carries on such other business for the purpose of evading or violating the
 34 provisions of this act part.

35 (15) A borrower may rescind the payday loan at no cost at any time prior to the close
 36 of business on the next business day following the day on which the payday loan was made by
 37 paying the principal amount of the loan to the licensee in cash or other immediately available
 38 funds.

39 SECTION 4. An emergency existing therefor, which emergency is hereby declared to
 40 exist, this act shall be in full force and effect on and after its passage and approval.